

Stuart Thalblum, Esq., Of Counsel  
[st2@frontiernet.net](mailto:st2@frontiernet.net)  
Cohen, LaBarbera & Landrigan, LLP  
40 Matthews Street  
Suite 203  
Goshen, NY 10924  
845-291-1900  
Fax: 845-291-8601

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

In re

Yitschak Goldstein,

Debtor.

-----X

Case No. 13-37651-cgm

Chapter 13

Hearing Date: March 10, 2015

Hearing Time: 10:45 a.m.

**NOTICE OF MOTION FOR ADMINISTRATIVE CLAIM PURSUANT TO**

**11 U.S.C. 503(b)(1)(A)**

Please take notice that Debtor's Landlord, KJ Acres LLC, by the undersigned attorneys, will move this Court on the 10<sup>th</sup> day of March, 2015, at 10:45 a.m. or as soon thereafter as counsel can be heard, at the United States Bankruptcy Court, 355 Main Street, Poughkeepsie, NY 12601 for an Order pursuant to 11 U.S.C. §362(d)(1) allowing for Owner's administrative expense claim in the amount of \$15,300 (\$1,700 per month) for use and occupancy of the Premises from June 1, 2014 through February 28, 2015; and (2) for such other relief as the Court may

deem just and proper.

Dated: Goshen, New York  
March 3, 2015

COHEN, LaBARBERA & LANDRIGAN, LLP

Counsel for Debtor's Landlord KJ Acres LLC

By: /s/ Stuart Thalblum

Stuart Thalblum, Esq.  
Of Counsel  
[st2@frontiernet.net](mailto:st2@frontiernet.net)

COHEN, LaBARBERA & LANDRIGAN, LLP  
40 Matthews Street  
Suite 203  
Goshen, NY 10924  
845-291-1900  
Fax: 845-291-8601

TO:

Warren Greher, Esq.  
Greher Law Offices, P.C..  
1161 Little Britain Road, Suite B  
New Windsor, NY 12553  
Attorney for Debtor

Jeffrey L. Sapir, Trustee  
399 Knollwood Road, Suite 102  
White Plains, NY 10603

UNITED STATES TRUSTEE  
74 Chapel Street  
Albany, NY 12207

Stuart Thalblum, Esq., Of Counsel  
[st2@frontiernet.net](mailto:st2@frontiernet.net)  
Cohen, LaBarbera & Landrigan, LLP  
40 Matthews Street  
Suite 203  
Goshen, NY 10924  
845-291-1900  
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## DECLARATION IN SUPPORT OF ADMINISTRATIVE CLAIM PURSUANT TO 11

### U.S.C. 503(b)(1)(A)

KJ Acres LLC (the "Owner"), by its attorneys Cohen, LaBarbera & Landrigan, LLP, makes the following motion in support of its administrative claim for past-due, post-petition rent and/or fair use and occupancy for the Debtor's residence located at 131 Acres Road, Unit 201, Monroe, NY (the "Premises"), accrued since this Court's Order dated May 21, 2014, granting the Owner relief from the automatic stay, in the amount of \$15,300, representing rent and/or use and occupancy from June 1, 2014 through February 28, 2015. The Debtor has continued to embroil his lawful eviction in frivolous litigation in the United States District Court, while failing to pay any amount whatsoever to the Owner, and continuing to occupy the Owner's property, month after month after month.

### **JURISDICTION**

1. On December 6, 2013 (the "Petition Date"), the above-captioned debtor (the

“Debtor”) filed his voluntary petition for relief under chapter 13 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §157 and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (B). Venue is proper in this District pursuant to 28 U.S.C. §1408 and 1409.

#### **BACKGROUND**

3. KJ ACRES LLC (“Owner”) has been the owner of the Premises since 2010.

4. Owner acquired the Premises from its principal, Nuchem Friedman (and Simon Tov Associates, an entity owned and controlled by Abraham Joseph). Mr. Joseph and Simon Tov Associates were subsequently bought out by Owner.

5. Upon information and belief, Mr. Goldstein has been a tenant in the Premises since approximately 2004. Upon information and belief, prior to 2008, Mr. Goldstein paid his rent to Mr. Joseph, and thereafter to Owner.

6. In or about 2008, Mr. Goldstein began withholding rent, upon information and belief, based on a belief that Mr. Goldstein was entitled to a conveyance of the Premises based on some arrangement with Mr. Joseph.

#### **Rabbinical Court and Justice Court Proceedings**

7. As a result, Mr. Goldstein and the Owner submitted to arbitration before the Beis Din Hamishpot, Monsey, NY. On September 18, 2008, the Beis Din had ruled that Mr. Goldstein “has the status of a ‘tenant’.”

8. Mr. Goldstein thereafter continued to withhold rent. As a result, on November 5, 2012, the Beis Din ruled that Mr. Friedman was “authorize[d] to sue [Goldstein] in secular

court."

9. On May 27, 2013, the Beis Din ruled that its September 8, 2008 (sic) ruling was still valid.

10. Thereafter, Goldstein was served with a new 3-day Notice, Notice of Petition and Petition for return date of November 25, 2013.

11. On November 25, 2013, Mr. Goldstein appeared pro se and requested an adjournment to hire yet another new counsel. An adjournment was granted until December 4, 2013. On or about November 27, 2013, Mr. Goldstein's [third] counsel, David A. Brodsky, Esq., prepared the Supreme Court action Goldstein v. Joseph, et al, Orange County Index No. 9597/2013 (the "Supreme Court Action") and Notice of Pendency and filed same on December 2, 2013.

12. Mr. Goldstein served and filed a Motion with the Justice Court on December 4, 2013 seeking dismissal, stay or transfer of the Justice Court Summary Proceeding.

13. On December 4, 2013, Judge Steven I. Milligram of the Town of Monroe Justice Court informed the parties how he intended to rule on the proceedings, and after such discussion, a stipulation was entered into by the parties on the record, in which Goldstein was to pay into escrow with Cohen, LaBarbera & Landrigan, LLP, the sum of \$30,000.00 by approximately 4:00 pm on December 6, 2013, an additional \$13,000.00 by approximately 4:00 pm on December 6, 2013, and an additional \$1,700.00 per month commencing January 1, 2014, to be held pending determination of the Supreme Court action. Upon default, Judge Milligram indicated he would sign the warrant and judgment.

**Bankruptcy Proceedings**

14. Mr. Goldstein did not make the payment as required. Instead, at 2:22 pm on December 6, 2013, he filed his Chapter 13 Petition in this court. According to the Mr. Goldstein's own sworn Petition and schedules, the Debtor did not claim any interest in any Real Property on Schedule A, including the Premises.

15. Between the Petition Date and March 2014, the Debtor failed to make any payments in consideration of his post-petition obligation to Mr. Friedman.

16. On or about March 2, 2014, the Debtor tendered to Mr. Friedman a check in the amount of \$1,700.00, dated "February 1, 2014." At the hearing in this Court held March 4, 2014, the Debtor tendered to the Owner's counsel, two (2) additional checks dated "January 2, 2014" and "March 1, 2014," respectively, each in the amount of \$1,700.00. Thereafter, counsel delivered these checks to Mr. Friedman with the instruction that Mr. Friedman could deposit them, and that Mr. Friedman would receive monthly \$1,700.00 checks for the pendency of the bankruptcy, in addition to distributions on his pre-petition claim (if allowed).

17. On March 11, 2014, all three (3) checks were dishonored.

18. On April 9, 2014, the Owners moved for relief from the bankruptcy stay.

19. On May 19, 2014, this court granted the Owners' motion for relief from the stay.

A copy of the Order signed by this court on May 21, 2014 is annexed hereto as **Exhibit 1**. The Order states that "the automatic stay instituted upon filing of the within bankruptcy case is hereby terminated pursuant to 11 U.S.C. §362(d)(1) so that the parties may continue litigating in New York State Supreme Court and in Justice Court in the Town of Monroe."

**Return to Justice Court**

20. On May 28, 2014, the Owners and Mr. Goldstein were again before Judge Milligram in the Monroe Justice Court. See transcript, **Exhibit 2**.

21. Again, Judge Milligram ordered that Goldstein was to pay into escrow with Cohen, LaBarbera & Landrigan, LLP, the sum of \$53,000.00 by approximately 4:00 pm on Friday, June 6, 2014, to be held in escrow pending resolution of the Supreme Court action.

22. Judge Milligram specified (page 46 et seq.) that he would not entertain any further orders to show cause without the escrow of cash to Owners' attorneys' escrow account.

23. Due to purported scheduling conflicts by Mr. Goldstein (who claimed he was required to be out of the country from June 14th until June 24th for his son's wedding) and his counsel, as detailed in his counsel's June 9, 2014 letter to the Justice Court (See June 9, 2014 letter to Justice Court, **Exhibit 3**), the Justice Court adjourned the June 11, 2014 hearing until July 10, 2014 at 10:00 a.m., by which time, the amount to be deposited into escrow per Judge Milligram's instructions had increased to \$56,400.00. Mr. Goldstein failed to do so.

**Procedural History in Federal District Court**

24. On June 20, 2014, during the exact time Mr. Goldstein had represented that he was going to be out of the country for his son's wedding, Mr. Goldstein filed a pro se Complaint in Federal Court, assigned Case No. USDC SDNY Case No. 14 CV 4477 (the "Federal Court Action"), alleging the same claims covered in his Supreme Court action.

25. In the Federal Court Action, Judge Román has already dismissed the case against Judge Milligram *sua sponte*, and persuaded Mr. Goldstein to dismiss the case as against the Attorney General of the State of New York, Cohen LaBarbera & Landrigan LLP, Ronald J.

Cohen, Stephen P. LaBarbera, Stuart Thalblum, Thomas C. Landrigan, Abraham Srugo, and Yossi's Cafe & Restaurant Inc. Although he agreed to do so, Mr. Goldstein has not yet dismissed Joseph Kunstlinger and Joseph Kunstlinger P.C. Motions to Dismiss Mr. Goldstein's Complaint in the Federal Court Action were served on Mr. Goldstein on February 8, 2015, and are returnable before Judge Román on April 17, 2015. A copy of the Affirmation of Service of the motion is annexed hereto as **Exhibit 4**.

26. In the instant Chapter 13 case, Mr. Goldstein has not yet confirmed a Chapter 13 Plan, but has filed an objection to the Owner's claim for pre-petition rent in the amount of \$43,873.86, currently returnable March 10, 2015. The Owner has filed papers and exhibits in support of its claim.

**Debtor's Alleged Claim to be a "Contract Vendee"**

27. The purported contract dated December 29, 2008 states in Paragraph 1 thereof that the purchase price is payable "upon approval of a no-action letter by the New York State Department of Law, by check subject to collection: \$17,200.00."

28. Said no-action letter was issued March 31, 2009, a copy of which is annexed hereto as **Exhibit 5**. Debtor has produced no evidence whatsoever that the required downpayment was ever made.

29. The purported contract also states in Paragraph 7 thereof that "Closing will take place at the office of SELLER ATTORNEY at 10:00 AM o'clock on or about 75 days from the date of this contract."

30. The purported contract states in Paragraph 3 thereof that "All money payable under this contract unless otherwise specified, shall be either a. Cash, but not over one thousand

(\$1,000.00) Dollars (or ) b. Good certified check of PURCHASER, or official check of any bank..."

31. Mr. Goldstein has not produced any evidence of any such payment. The purported contract states in Paragraph 4(e) thereof that the sale is subject to "mortgage financing for Purchaser in the amount of 80% of the Purchase Price at prevailing interest rates." Needless to say, there is no evidence Mr. Goldstein ever obtained any such financing.

32. Finally, the purported contract states in Paragraph 20 thereof that "If SELLER is unable to transfer title to PURCHASER in accordance with this contract, SELLER'S sole liability shall be to refund all money paid on account of this contract... Upon such refund and payment this contract shall be considered canceled, and neither SELLER nor PURCHASER shall have any further rights against the other."

33. At best Mr. Goldstein's claim is many years late and thousands of dollars short. As Mr. Goldstein failed to perform ANY of his conditions, he himself breached the contract, and the purported sellers have no liability. The Owner is the owner of the Premises, and Mr. Goldstein is a squatter who has been living at the Premises rent-free for a full year after relief from the stay was granted to evict him.

#### **RELIEF REQUESTED**

34. Owner respectfully requests that this Court allow Owner's administrative expense claim in the amount of \$15,300 (\$1,700 per month) for use and occupancy of the Premises from June 1, 2014 through February 28, 2015, pursuant to section 503(b)(1)(A) of the Bankruptcy Code.

**BASIS FOR RELIEF**

35. 11 U.S.C. 503(b) provides that “After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—  
(1) (A) the actual, necessary costs and expenses of preserving the estate...”

36. It is respectfully submitted that providing shelter for the Debtor as he attempts to reorganize is a necessary cost of the estate. Additionally, it is thoroughly inequitable that Mr. Goldstein continue to benefit from living in the Owner’s property without any payment for the use and occupancy thereof, even after this court granted relief from the automatic stay.

37. *In re Babbs*, 265 B.R. 35 (Brtcy., S.D.N.Y. 2001), the debtor “filed a voluntary petition for relief under Chapter 13... Confirmation took place... [which is not the case herein]. The case was then voluntarily converted to one under Chapter 7 on June 3, 1997. On November 9, 1997, the case was closed and a full discharge granted. Babbs was in arrears with St. Phillips, her landlord, at the time of the original Chapter 13 filing. When Babbs failed to meet her post-confirmation rental obligations, St. Phillips made a motion to lift the automatic stay, which was granted by this Court on May 22, 1997. St. Phillips then filed a Notice of Presentment for June 6, 1997 for an order granting the automatic stay relief as directed by the Court. Three days prior to the Presentment Date, Babbs converted the case to Chapter 7. It is undisputed that Babbs incurred post-Chapter 13 petition, pre-conversion rental arrears of \$11,135.00.”

38. In *Babbs*, Judge Blackshear held that the “residential lessor’s claim for debtor’s postpetition, pre-conversion [to Chapter 7] rental arrears was entitled to administrative expense priority.” Judge Blackshear further ruled that “Courts have discretion when deciding which debts to allow as administrative expenses. Bankr.Code, 11 U.S.C.A. §503(b).”

39. See also, *In re Patient Education Media, Inc.*, 221 B.R. 97 (Brtcy., S.D.N.Y. 1998), Judge Bernstein held that debtor knowingly and willingly used claimant's property during prerejection period to preserve and maximize estate assets and, thus, claimant was entitled to an administrative claim.

40. The Owner is the owner of the Premises, and Mr. Goldstein is a squatter who has been living at the Premises rent-free for a full year after relief from the stay was granted to evict him. The Owner has yet to receive ANY adequate protection. It is respectfully submitted that providing shelter for the Debtor as he attempts to reorganize is a necessary cost of the estate. Additionally, it is thoroughly inequitable that Mr. Goldstein continue to benefit from living in the Owner's property without any payment for the use and occupancy thereof, even after this court granted relief from the automatic stay. The Debtor has voluntarily chosen to remain in the Premises without providing any adequate protection to the Owner, while he pursues his patently meritless, frivolous and arguably sanctionable actions in the United States District Court.

41. The Owner reserves its right to assert additional administrative claims against the Debtor for amounts not yet due for as long as the Debtor remains in possession without payment and to amend, modify and/or supplement this request, as appropriate under the circumstances.

WHEREFORE, the Owner respectfully requests that the Court enter an order (i) allowing the Owner's administrative expense claim in the amount of \$15,300 pursuant to section 503(b) of the Bankruptcy Code and (ii) granting such other and further relief as may be just and proper

under the circumstances.

Dated: March 3, 2015  
Goshen, New York

By: *s/ Stuart Thalblum*  
STUART THALBLUM

**EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re

Case No. 13-37651-cgm

Yitschak Goldstein,

Chapter 13

Debtor.

-----X

ORDER PURSUANT TO 11 U.S.C. §362(d)(1) TERMINATING THE AUTOMATIC  
STAY

Upon the Motion of KJ ACRES LLC, by their attorneys, Cohen, LaBarbera & Landrigan, LLP, and upon the reading and filing of said Motion, dated April 9, 2014, and there being papers filed in opposition thereto, and the matter having come before this Court for a hearing on May 20, 2014, and after due deliberation, it is, pursuant to 11 U.S.C. §362(d)(1):

ORDERED, that the automatic stay instituted upon filing of the within bankruptcy case is hereby terminated pursuant to 11 U.S.C. §362(d)(1) so that the parties may continue litigating in New York State Supreme Court and in Justice Court in the Town of Monroe.

Dated: May 21, 2014  
Poughkeepsie, New York



/s/ Cecelia G. Morris

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Hon. Cecelia G. Morris  
Chief U.S. Bankruptcy Judge

**EXHIBIT 2**

JUSTICE COURT TOWN OF MONROE COUNTY  
OR ORANGE STATE OF NEW YORK

-----x  
KJ ACRES, LLC,

Petitioner,

-againsts-

YITZCHOK GOLDSTEIN,

Respondent.

-----x  
May 28, 2014

BEFORE: HON. STEVEN I. MILLIGRAM

APPEARANCES

COHEN, LaBARBERA & LANDRIGAN, LLP  
Attorneys for Petitioner  
40 Matthews Street, Suite 203  
Goshen, New York 10924  
BY: STUART THALBLUM, ESQ., of Counsel

MICHAEL D. METH, ESQ.  
Attorney for Respondent  
10 Moffatt Lane  
P.O. Box 560  
Chester, New York 10918

RODNEY C. CONROW  
Court Reporter  
175 Lily Pond Road  
Parksville, New York 12768  
(845) 292-3534

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2

THE COURT: This is KJ Acres, LLC  
versus Yitzchok Goldstein.

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5

There is an Order to Show Cause that  
was submitted to the Court --

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7

MR. THALBLUM: Your Honor, I would  
like to state on the record --

8

THE COURT: I'll get there.

9

First and foremost, Mr. Thalblum,  
were you provided with a copy of the Order to Show Cause  
and supporting documents with a notification of when it  
would be submitted to the Court?

13

14

MR. THALBLUM: No. I have still  
never seen any papers in support of the application.

15

16

17

18

19

20

21

On Monday night while I was in  
Buffalo for a bar mitzvah there was apparently an e-mail  
sent from mailingtruck@gmail.com, "Mr. Thalblum, please  
be advised that I will be moving for stay of the Justice  
Court Town of Monroe at 9:00 A.M. or as soon thereafter  
as the matter may be heard. Thank You. Yitzchok  
Goldstein."

22

THE COURT: What date?

23

MR. THALBLUM: What?

24

25

THE COURT: Does it give you a date  
or does it just say 9:00 A.M.?

1  
2 MR. THALBLUM: No, it just says 9:00  
3 A.M.

4 MR. METH: No, it doesn't. It say  
5 May 26th at 11:31 A.M.

6 THE COURT: Wait Mr. Meth.

7 MR. METH: I'm sorry. I apologize.

8 MR. THALBLUM: That was 11:32 A.M.  
9 May 26th.

10 I got a fax of a letter from  
11 Mr. Meth's office on May 27th sent at approximately  
12 17:06 P.M. 17:06 I guess is 5:00 P.M.

13 THE COURT: 5:06 P.M.

14 MR. THALBLUM: 5:06 P.M. yesterday  
15 while I was in route from appearances in Brooklyn,  
16 Staten Island and the Town of Waywayanda for grievance  
17 day "that in response to our order for temporary relief  
18 the Court has ordered all parties to appear tomorrow at  
19 6:30 P.M. at the Town of Monroe Justice Court." There  
20 was no application attached to it.

21 I also got a message from the Court  
22 personnel that I returned this morning and she said only  
23 attorneys were expected at tonight's appearance, so here  
24 I am without Mr. Friedman.

25 THE COURT: And I appreciate your

1

4

2 coming.

3

First and foremost, I have not

4

signed any Order to Show Cause at this point.

5

MR. THALBLUM: As of this moment I

6

don't know what relief Mr. Meth is seeking.

7

THE COURT: Actually with respect to

8

Mr. Meth, the application was submitted pro se then  
there is a second document indicating that he retained  
or was going to retain Mr. Meth.

9

10 The papers were not submitted by  
11 Mr. Meth, is that correct?

12

13 MR. METH: I submitted them to the  
14 Court, Judge.

15

THE COURT: I'm sorry.

16

17 MR. METH: I submitted them to the  
18 Court yesterday morning just in the interest of time  
because --

19

20 THE COURT: Let me rephrase my  
comment.

21

MR. METH: Fair enough.

22

23 THE COURT: The papers were done by  
24 your client pro se even though you may have delivered  
them to the Court, correct?

25

MR. METH: That's correct.

1  
2 I was retained again by  
3 Mr. Goldstein over the holiday weekend. I worked with  
4 him as best I could over the holiday weekend and we  
5 wanted to get it to the Court as soon as it opened on  
6 Tuesday after the holiday.

7 MR. THALBLUM: Now, since --

8 THE COURT: Wait.

9 MR. THALBLUM: You're in charge,  
10 Your Honor.

11 THE COURT: Since Mr. Thalblum has  
12 not been provided with any of the motion papers I'm not  
13 signing the Order to Show Cause.

14 MR. METH: All right.

15 THE COURT: I have read the papers.

16 I was here when after lengthy  
17 discussions a settlement was placed on the record at  
18 which time Mr. Thalblum's client as well as your client  
19 both expressed an understanding, and knowledge and an  
20 agreement to the terms and conditions of the this  
21 settlement. That's reflected in the transcript that's  
22 annexed.

23 MR. METH: I have another copy for  
24 Mr. Thalblum before we move on.

25 THE COURT: Understood.

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Mr. Thalblum, just so you're aware,

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and again I'm not going to quote verbatim from the  
4 papers nor am I indicating anything as to their  
5 authenticity, first and foremost, there are text that I  
6 find to be at the very least inappropriate. But more  
7 importantly, there is an allegation of a fraud against  
8 your client that supposedly a contract for the sale of  
9 the premises as a condominium was recently discovered.

10

MR. THALBLUM: Those were also  
11 contained in Mr. Goldstein's last set of papers before  
12 Chief Judge Morris, and I was offended by the references  
13 to me that were contained in those, if I may say so.

14

THE COURT: Again, I do not  
15 intend -- Mr. Meth, I'm not suggesting anything. I  
16 would say the same if those type of allegations were  
17 made against you. I have no reason to suspect other  
18 than advocacy on the part of yourself, or Mr. Thalblum  
19 both in this matter or any other matter you appeared in  
20 front of me on.

21

When somebody accuses a lawyer of a

22 fraud I take that very seriously.

23

MR. METH: Understood.

24

THE COURT: And I can appreciate  
25 that a pro se litigant may not necessarily appreciate

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7

2 the difference of when you're speaking and representing  
3 on behalf of what your client has told you and provided  
4 you by way of information versus an active  
5 participation.

6

7 I understand a pro se litigant may  
8 have an inability to draw the distinction, but I find  
9 those types of allegations to be very disconcerting.

10 I'm also extremely perturbed that  
11 after a settlement was placed on the record in this  
12 Court which in effect the only thing required of it was  
13 payment in escrow -- at least at that time payment in  
14 escrow to Mr. Thalblum of an agreed upon amount while an  
15 action proceeded in Supreme Court to its resolution.

16

17 That payment was not made, and  
18 within a day or so there was a filing in Bankruptcy  
19 Court.

20

MR. THALBLUM: Same day.

21

THE COURT: Same day. Excuse me.

22

I'm not privy nor have I been  
23 provided with any proof that was submitted to the  
24 Bankruptcy Court other than obviously a copy of the  
25 order taking this order out of bankruptcy.

26

27 Here's where we stand. I'm not  
28 telling you you can't submit your Order to Show Cause,

1

8

2 Mr. Meth.

3

I do not believe in depriving

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Mr. Thalblum the right to bring a motion. I'm not

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telling him I'm going to sign it, I'm not telling him

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I'm going to grant it, but there is a way to do it.

7

I assume that the motion papers that

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have been provided to me would be the same you provided

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to Mr. Thalblum, correct?

10

MR. METH: Yes, Your Honor.

11

THE COURT: As of this moment there

12

is no stay, there is no Order to Show Cause signed.

13

I'm not going to grant anything by  
way of Order to Show Cause until Mr. Thalblum has an  
opportunity to see the papers and without preparing a  
full opposition, because it's going to take you some  
time I suspect to at least indicate to me that there is  
a -- I'm trying to get the right word and I apologize.

19

I would like a brief summary. If we  
were here now and you had a copy of the papers, and you  
were both discussing what's on the Order to Show Cause  
you would give me a summary of argument, you would give  
me a summary of argument as I understand the way the  
procedure should work in this type of circumstance.

25

MR. THALBLUM: Again, Your Honor, I

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9

2 still really don't have much of an idea what --

3 THE COURT: I'm not suggesting there  
4 is proper service. Those are the same papers provided  
5 to the Court?

6 MR. METH: It's an exact copy.

7 Under the CPLR, Judge, I don't  
8 believe I have to give him a full copy of the papers. I  
9 just have to give him notice that temporary relief is  
10 being sought. It's only after the Order to Show Cause  
11 is signed that service is required when we are seeking  
12 temporary relief.

13 Nevertheless, I half expected that  
14 because of the holiday and the time difference. That's  
15 an exact copy with the exhibits of all of the exact  
16 submission including the notice that was given.

17 THE COURT: As I understand the  
18 proceeding that are before me the way things were  
19 left -- I know you weren't here, Mr. Meth; I know you  
20 have seen the transcript -- Mr. Thalblum, you were here.

21 MR. THALBLUM: I was here.

22 THE COURT: Please correct me if I  
23 misunderstand or misstate.

24 MR. THALBLUM: I happen to have the  
25 transcript right here.

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THE COURT: That the agreement that

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was reached on the record was that there would be  
\$43,000, approximately, sent by appropriate funds to  
Mr. Thalblum's firm within two days of the proceedings  
before me, to be held in escrow pending the  
determination of the issues between the parties in  
Supreme Court. That was part one, correct, Mr.  
Thalblum?

9

10 MR. THALBLUM: That's correct.

11

12 THE COURT: Mr. Meth, is that what  
you understood the settlement before me to require?

13

14 MR. METH: Yes, Your Honor.

15

16 MR. THALBLUM: It was by 4 o'clock  
17 on Friday, December 4th.

18

19 THE COURT: And I apologize; I read  
this about an hour ago, may be two.

20

21 Was there something about additional  
22 payment of rent that was required?

23

24 MR. THALBLUM: Yes. There was also  
supposed to be paid into escrow 1700 per month pending  
the hearing and determination in the Supreme Court  
action.

25

26 THE COURT: In the event that the  
43,000 was not submitted to be held in escrow, or the

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11

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rent payments were not held a judgment and warrant of  
eviction would be issued would be issued by this Court  
without further proceeding because this case has a very  
lengthy history before me.

3

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MR. THALBLUM: That's correct, Your  
Honor.

8

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THE COURT: By the filing of the  
bankruptcy clearly it was technically --

10

MR. THALBLUM: Stayed.

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12

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14

THE COURT: Well, all proceedings  
were stayed, and while it may technically be considered  
a default it can't be a default acted upon because of  
the bankruptcy stay.

15

MR. THALBLUM: Until now.

16

MR. METH: I think there is still a  
14 day bankruptcy stay in effect.

17

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THE COURT: There is an order that  
was faxed to the Court from the bankruptcy Judge lifting  
the stay as to these proceedings?

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MR. THALBLUM: My apologies, Your  
Honor. I faxed it to the Court and to Mr. Goldstein's  
more recent counsel, Mr. Brodsky, instead of Mr. Meth.

THE COURT: Have you seen it?

MR. METH: I haven't seen that

1  
2 order, but I believe I am familiar with what the  
3 discussion is. But I believe in addition to that once a  
4 bankruptcy is discharged there is a 14 day statutory  
5 stay. I believe it's under Section 4001 or 4011 of the  
6 Bankruptcy Code, which gives a debtor whose bankruptcy  
7 is being released 14 days where no action can be taken  
8 against him in that span.

9 THE COURT: I'm not a bankruptcy  
10 lawyer.

11 MR. METH: It's discussed on the  
12 transcript of the Bankruptcy Court as it's being  
13 discharged because --

14 MR. THALBLUM: It's not discharged.  
15 The relief from stay was granted.

16 According to Chief Judge Morris that  
17 applies for the debtor to appeal the decision of the  
18 bankruptcy Judge to what I would suppose would be the  
19 district Court.

20 THE COURT: Let me short circuit  
21 you.

22 Is there a proceeding in State  
23 Supreme Court?

24 MR. METH: No.

25 MR. THALBLUM: Yes. Yes, there is a

1

13

2 proceeding in State Supreme Court brought by  
3 Mr. Goldstein also asserting some sort of fraud and  
4 ownership right to the property. That was filed by  
5 Mr. Goldstein I believe about two days prior to this  
6 Court's December 4th hearing.

7

8 We have also obtained relief from  
9 the stay in order to answer and presumably make a motion  
10 to dismiss that Supreme Court action based on many of  
11 the same principles that have come up in this case and  
the bankruptcy case.

12

13 THE COURT: And the issue is to

14 acquire title in affect?

15

16 MR. THALBLUM: Well, we are claiming  
17 that Mr. Goldstein's action is a cloud on title.

18

19 THE COURT: What Mr. Goldstein's  
20 action seeks is to clarify ownership of the property or  
words to that affect?

21

22 MR. METH: Is that action still

23 open?

24

25 MR. THALBLUM: It was stayed by the

bankruptcy.

26

27 MR. METH: The thing that hasn't

28 been said yet on tonight's record --

29

30 THE COURT: Yes, please.

14

1  
2 I realize I'm being a little more  
3 informal because right now I'm trying to figure out  
4 where we are.

5 MR. METH: The entire base of this  
6 whole action, the whole corner stone, every cliche you  
7 can think of, is that there is no contract.

8 I can't help the timing of the FOIL  
9 answer by the attorney general that's given for a  
10 completely different reason. We didn't even request the  
11 contract. The FOIL request to the AG that resulted in  
12 us not only getting the contract but also Mr. Goldstein  
13 is listed as a partner in the LLC ownership of the condo  
14 that's at issue here. You can't have it both ways. He  
15 either committed fraud on the AG's office by using a  
16 false contract to file the condo or there is no summary  
17 proceeding jurisdiction in a local court to do a  
18 partition action between the partners of that LLC.

19 And I understand the way it went  
20 down with the bankruptcy, and I wasn't here, but I read  
21 the last transcript, but the bottom line is, yes, there  
22 has been a contract that's produced that the bankruptcy  
23 Judge knew about when the lien was discharged, this  
24 exact situation. 5015 was brought up --

25 MR. THALBLUM: What lien was

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15

2 discharged?

3

4 MR. METH: Excuse me, the stay. I

5 apologize.

6

7 MR. THALBLUM: The stay was removed.

8

9 MR. METH: When it was removed the  
10 conversation about, you know, the impact of the contract  
11 upon the action was discussed, and that Judge, while  
12 specifically didn't say you have relief, they did say  
13 that's the sort of action that can be brought back in  
14 local Court.

15

16 THE COURT: Except that there were  
17 proceedings before.

18

19 MR. METH: And your stip wasn't  
20 complied with, I assume is where you're going.

21

22 THE COURT: Right.

23

24 MR. METH: And the only thing I can  
25 say to that, Judge, and I agree, and something that I  
discussed with him at length, my only argument that I  
can say to that, for what it's worth, at this point that  
stip was based on a mistake -- it wasn't a mistake of  
fact, it was alleged by my client that a contract  
existed and the person who had it in his possession,  
Mr. Friedman, didn't tell the Court that it even existed  
and he lost it, he just disavowed that it existed

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16

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completely.

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And I agree with you, I have even  
spoke to Mr. Goldstein about the tenor of his language.  
That's the first thing that I picked up on.

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The bottom line is, the contract  
exists now, and it's in writing, it's still open because  
there has been no action on it; he's listed on the AG's  
site.

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13

What happened over the holiday

weekend without giving notice, I suspect he has notice  
now, I can appear in 24 hours again. We are still  
requesting relief of the stay.

14

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Why your prior stip wasn't complied  
with; when he made that stip he was up against the wall.  
There was no contract, he was at the end of his  
litigation rope, and this contract now basically --  
everything he said about it, the terms are accurate.  
Everything he said about the condo filing, the terms are  
accurate.

21

22

23

24

THE COURT: Except that when this  
matter came before me, if I recall correctly, there were  
two determinations by the Beis Din establishing the  
nature of the relationship as landlord-tenant.

25

MR. METH: Because they couldn't

1  
2 produce the contract. In that proceeding he said there  
3 is a contract. They couldn't actually see it so they  
4 said based on what they know then -- if Friedman had  
5 just said there was a contract the Beis Din's  
6 arbitration one and two wouldn't have been sustained.

7 THE COURT: I'm just randomly trying  
8 to work out some numbers in my head.

9 We know December to June is 6  
10 months, at 1700 a month is roughly \$10,000, if my math  
11 is accurate.

12 MR. THALBLUM: A little over  
13 I revised the judgment. The current  
14 amount should be 52950 plus costs and fees.

15 If I may say so, this talk about a  
16 contract, it's spurious. There is no contract. The  
17 document that was submitted to the attorney general was  
18 contained in the package, the request for the no action  
19 letter converting the property to a condo. I don't have  
20 a copy of the no action letter, but the property is a  
21 condo, so it's been 6 years since the no action letter  
22 was submitted. Mr. Goldstein has not paid a penny of  
23 consideration for this supposed purchase. He has not  
24 paid any down payment, he has not paid any payment to  
25 consummate the contract.

1  
2 MR. METH: I respectfully disagree  
3 with that position.

4 MR. THALBLUM: He cannot hold  
5 himself open as a contract vendee interminably after the  
6 conditions were complied with. Not to mention also he  
7 has been claiming his ownership interest for some years.

8 MR. METH: He has been contract  
9 vendee for a number of years.

10 THE COURT: Before we get there --

11 MR. THALBLUM: The Beis Din rejected  
12 his argument twice.

13 THE COURT: I agree, Mr. Thalblum,  
14 but he --

15 MR. THALBLUM: He breached his  
16 stipulation with this Court, he disobeyed the orders of  
17 Judge Morris to make those petition payments, to provide  
18 adequate protection, he disobeyed the Beis Din's orders.

19 THE COURT: Let's take it back just  
20 a hair.

21 I agree with you except there is a  
22 document which at least superficially appears to be a  
23 contract, that appears to be signed by Mr. Goldstein,  
24 that appears to be signed by your client as well and by  
25 another gentleman. Appears. So, here's where my issue

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with what's been raised against your client lies.

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I agree with you; he agreed on the record, he admitted he knew the terms and conditions, he spoke with counsel, he was represented by counsel, agreed to the settlement, agreed that his attorney represented him adequately. It's all on the record, so, I agree with you when it goes to there; that there were obligations that were stipulated to in this Court that were not met.

11

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MR. THALBLUM: This Court and two

other forums.

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THE COURT: I can't speak of other courts. I can only tell you about me. If you provide me proof of those I will consider them as well.

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However, here's where the ball bounces back. His argument before me, and I don't know what he said in other courts, because none of those are before me right now, is that he always maintained there was a contract, but it was never given to him. He didn't have a copy of it, and that your client in effect secreted it, hid it, take your choice, whatever choice of words we care to label it with. In some manner your client had the contract but did not disclose it.

25

Now, without deciding the issue, and

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I'm not deciding anything tonight, I can't, too many  
3 things bouncing around on this; if there is a -- I just  
4 ask this more as a rhetorical question, if there was in  
5 fact a valid contract that your client couldn't produce,  
6 Mr. Meth, that your client, Mr. Thalman, chose not to  
7 produce, isn't there a predicate for suggesting to the  
8 Beis Din that their determination as to a  
9 landlord-tenant relationship is in error? If there is  
10 in fact a contract -- let's say he breached it. I'll  
11 get there in a second.

12

MR. THALBLUM: Who breached it?

13

THE COURT: Let's say there is a  
14 contract between your client and Mr. Goldstein to buy  
15 this condominium. Let's hypothetically say there is  
16 such a contract, and it's a valid and binding agreement.  
17 If your client had that contract and didn't produce it  
18 to the Beis Din or before this Court or any other  
19 tribunal I would be very concerned with that. I'm not  
20 suggesting that he did or didn't. I'm not giving any  
21 credence to any arguments. I'm just raising, again,  
22 more a rhetorical point more than anything else. If in  
23 fact your client knew there was a contract, was a party  
24 to the contract and had a copy of the contract and  
25 misrepresented to the Beis Din, to this Court or other

1 21

2 Courts there is no such contract, it would seem to me  
3 that at the very least the predicate for the  
4 determination by the Beis Din of a landlord-tenant  
5 relationship would be faulty and it would go from there.  
6 So, that's what I'm wrestling with.

7 MR. THALBLUM: There is two problems  
8 with that.

9 I would say that it's incumbent upon  
10 the person that's propounding that there is a contract  
11 to produce it.

12 THE COURT: Right.

13 MR. THALBLUM: Secondly, before the  
14 Beis Din, and this is contained in the Beis Din's  
15 decisions, as translated and which have previously been  
16 provided to the Court and to Mr. Goldstein's counsel,  
17 whether Mr. Meth or one of his predecessors or  
18 successors --

19 THE COURT: That there is no  
20 contract.

21 MR. THALBLUM: No. That if  
22 Mr. Goldstein has an issue with Mr. Joseph as the seller  
23 who breached the agreement to sell the unit to  
24 Mr. Goldstein then his recourse is with Mr. Joseph.

25 THE COURT: Actually, the contract

1  
2 that's Exhibit B --

3  
4 MR. THALBLUM: Right, I see is  
5 between Mr. Friedman and Simon Tov Associates, which is  
the entity --

6  
7 MR. METH: Partnership that owns  
the condo.

8  
9 MR. THALBLUM: Controlled by  
Mr. Joseph.

10  
11 But the Beis Din did address that  
12 issue that Mr. Goldstein should take his claim for  
damages against Mr. Joseph.

13  
14 THE COURT: Except that in this  
agreement Mr. Friedman and Simon Tov are both identified  
15 as seller.

16  
17 MR. THALBLUM: I understand from the  
documents that Mr. Goldstein obtained from the attorney  
18 general's office that this was submitted as part of the  
19 request for no action letter.

20  
21 THE COURT: I don't know what was  
submitted or why it was submitted. I haven't even seen  
22 that.

23  
24 I have a real issues with  
25 Mr. Goldstein not complying with the stipulation put on  
the record in this Court.

1 MR. THALBLUM: So do I.

2 THE COURT: As well you should.

3 Because it was my notes, my  
4 recollection and my understanding, Mr. Meth, that the  
5 purpose for having the money held in escrow --

6 MR. THALBLUM: Was to determine  
7 these issues in the context of the Supreme Court action.

8 THE COURT: Correct.

9 MR. THALBLUM: That Mr. Goldstein  
10 himself commenced.

11 THE COURT: Correct.

12 And that's where my issue with your  
13 client lies. Because within a day or whatever it was,  
14 of the agreement in this Court, as he has the right to  
15 do, he filed a proceeding in bankruptcy court which  
16 stayed everything. The stay is now lifted as far as I  
17 can determine.

18 MR. THALBLUM: Correct.

19 THE COURT: The payment had to be  
20 made by 4 o'clock on Friday afternoon, right? The  
21 bankruptcy filing was made before the payment was due.

22 MR. THALBLUM: The bankruptcy filing  
23 was made about 2:30 on Friday afternoon.

24 THE COURT: Before the payment was

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24

2 due.

3 MR. THALBLUM: Mr. Goldstein had  
4 already taken his pre-petition counseling course at the  
5 time that he entered into the stipulation.

6 THE COURT: But I think you know  
7 where I'm going.

8 MR. THALBLUM: I'm not sure.

9 MR. METH: I know exactly where  
10 you're going. Can I put it in an envelope and write it  
11 and see if I'm right?

12 THE COURT: Here's the real  
13 interesting question. And I don't have an answer for  
14 you. I raise it as a question.

15 If he technically could not default  
16 because the bankruptcy stay was in effect, and he were  
17 to hand you a check today for \$53,000 to be held in  
18 escrow would he remedy his default?

19 MR. THALBLUM: The bankruptcy stay  
20 affects any creditor attempting to enforce or make any  
21 collection from a debtor.

22 THE COURT: There would also be a  
23 preference. He couldn't make the payment to you.

24 In theory if Mr. Goldstein were to  
25 take -- I'm not saying he has it -- it's 7:10 on

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25

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Wednesday.

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MR. THALBLUM: Again.

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THE COURT: Again. I apologize. I  
don't mean to laugh. We are back again.

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MR. METH: At this time we are back  
with a contract in hand.

8

9

THE COURT: Here's what I'm  
thinking.

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12

MR. THALBLUM: If he wants to pay  
\$53,000 into escrow in my firm by this Friday at 4:00  
P.M.

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14

MR. METH: I think that stip, Judge,  
is Void Ab Initio. It's based on fraud.

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When something is based on fraud  
it's void as if it never happened. Do you know what I'm  
talking about? Void Ab Initio.

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THE COURT: Except when you read the  
transcript Mr. Goldstein initially didn't appear to be  
inclined to agree with what was being said by way of  
settlement. We took a recess, he spoke with counsel,  
which settlement was then placed on the record,  
Mr. Goldstein and Mr. Friedman both affirmed their  
testimony and for whatever reason -- people agree to  
settlements of matters, not necessarily because they